He was fined $30 on the first charge, $100 on the second charge and further disqualified from holding a driving licence for a period of 1 year.

He wrote a letter to me on the 10th September, 1968, setting out facts in connection with this offence. I tried to obtain the police enquiry paper in connection with this case. No police enquiry paper had been done by the police, despite the fact that application for a summons was applied for, according to the record, on the 29th July, 1968, over 5½ months after the offence. I could find no facts recorded by the magistrate for the purpose of assessing sentence. In *Public Prosecutor* v. *Chean Tin*,[1] Terrell Ag.C.J. held that it is the duty of magistrates, where an accused has pleaded guilty to record some evidence upon which the sentence may be based and upon which, on appeal, the adequacy or otherwise of such sentence can be reviewed. If that had been done, the unusual circumstances in which this offence had been committed would have come to light. As it is, with the co-operation of the learned deputy public prosecutor, I was able to cause investigation to be made to verify the facts which have been submitted by him for my consideration namely, the defendant was a paid driver employed by a bakery which possessed a van for the carriage of its own goods. He was in fact conveying loaves of bread in this van when the van broke down just outside Bayan Lepas. He therefore phoned to his manager and thereafter to his usual motor service firm who found that the gear box had gone completely out and the van had therefore to be towed back to town. In the circumstances, he did not know what to do with the loaves of bread, and his employer got him to take the loaves of bread in his car for delivery to Bayan Lepas. He was unfortunately caught by the police and accordingly charged. He has now lost his job because he has been disqualified from holding a driving licence for 12 months as a result of a conviction under section 74(2). I find his case is covered by section 98(2). Under this subsection, section 98(1), the offence of using motor vehicle without there being in force a valid carrier's licence, shall not apply to the use of a motor vehicle for removing goods from a disabled motor vehicle and removing such goods to a place of safety.

Bearing in mind the case of *Lee Yu Fah* v. *Public Prosecutor* [2] which decided that where an accused person has been convicted by the magistrate on his own plea of guilty and is precluded from appealing against the legality of the sentence under section 305 of the States Code, the appellate court can always in a proper case exercise its powers of revision, I decided to revise this case. I find in the circumstances, justice is best done if I quash the conviction on these charges and order the fines to be refunded. I also quash the order of disqualification for 12 months. The licence which is now retained by the magistrate's court should be returned to him.

Order accordingly.

Conviction and order of disqualification quashed.

SHAMSUDIN v. YAP CHOH TEH & ANOR.

[O.C.J. (Gill J.) September 19, 1968]
[Malacca — Civil Suit No. 96 of 1963]

Negligence — Blasting operations — Police constable present at place of blasting operations in pursuance of public duty — Invitee — Liability of person carrying out blasting operations.

Damages — Injury to eye as a result of blasting operations — Loss of sight of right eye — Loss of earnings — Chances of future promotion.

The plaintiff sued the defendants for damages arising out of an injury to his right eye which was caused by his being struck by a splinter of stone as a result of blasting operations at a quarry in Malacca. The plaintiff was a police constable who assisted the police escort party in transferring the explosives from the police station to the quarry. The first defendant was the contractor of the quarry who had a licence to possess explosives for the purposes of carrying out blasting operations and the second defendant was the first defendant's servant employed as a *kepala* at the quarry. The plaintiff's evidence was that he emerged from behind a rubber tree where he was stationed after the *kepala* and a police corporal had signalled the all clear and was struck in the eye by a splinter of stone following a further explosion.

Held: (1) it was clear from the evidence that the *kepala* as the shot-firer was negligent in giving the all clear signal without making certain that there were not going to be any further explosions. The first defendant was therefore liable in damages for his servant's negligence;

(2) the plaintiff was present at the quarry in pursuance of a public duty and consequently was in the same position as that of an invitee and it was the duty of the first defendant as an invitor to take reasonable care for the safety of the plaintiff;

(3) general damages should be fixed at $12,500 for the loss of one eye and a further $6,000 for loss of earnings.

Cases referred to:—

(1) *Steward* v. *North Metropolitan Tramways Co.* (1886), 16 Q.B.D. 556.

(2) *Read* v. *J. Lyons & Co. Ltd.* [1947] A.C. 156, 165.

(3) *Lindon Graving Dock Co. Ltd.* v. *Horton* [1951] A.C. 737, 784.

(4) *Mitchell* v. *National Coal Board* [1957] C.L.Y. 2193.

CIVIL SUIT.

Tara Singh Sidhu (*John Ang* with him) for the plaintiff.

G. R. T. Chelvam for the defendants.

Gill J.: This was an action by the plaintiff for damages arising out of an injury to his right eye which was caused by his being struck by a splinter of stone as a result of an explosion at the Pegoh Estate quarry, Pegoh in the district of Alor Gajah in the State of Malacca at about 3.45 p.m. on 19th September, 1957.

The first defendant was at all material times the contractor of the quarry and the second defendant was his servant employed as a *kepala* at the quarry. He had a licence to possess explosives for the purpose of carrying out blasting operations at the quarry, the condition of his licence being that such explosives were to be stored at Padang Sebang Police Station (now called Pulau Sebang Police Station) which was about 1½ miles from the quarry. Because of the Emergency the defendant was required to take the explosives from the police station to the quarry under police escort, the purpose of the escort being to ensure that the explosives did not pass into wrong hands.

The first defendant took explosives from the police station from time to time under police escor.t The officer-in-charge of the police station was normally in charge of the escort and he took two or three policemen with him. At about 2.00 p.m. on the date of the accident as a result of which the plaintiff was injured, corporal Abdul Manan bin Mahmud (P.W.2) accompanied the first defendant to the quarry as the officer in charge of a police escort party. The other members of his party were the plaintiff, who was then attached to Pulau Sebang Police Station as a police constable, and police constable Abdul Majid. The explosives consisting of dynamites, detonators and fuses were taken out of the magazine in the compound of the police station and loaded into the first defendant's car. The defendant drove the car from the police station to the quarry and the police escort party travelled with him in his car.

The evidence of the plaintiff was that when they reached the quarry the explosives were unloaded from the car and handed over to a *kepala* named Chua. He and his party took their positions about 20 feet from the place where the explosives were to be set. He saw the labourers fixing the dynamites to the wires with the first defendant standing nearby. This took about one hour. When the explosives were ready to be blasted corporal Abdul Manan directed them to take cover. There was an estate road passing by the side of the quarry for people to go into and come out of Pegoh Estate. He positioned himself behind a big rubber tree about 4 feet from the estate road and his instructions were to prevent people from passing along the road. After taking cover he was to wait for the sound of a whistle from corporal Abdul Manan whereupon he was to stop people from using the road. After this the *kepala* was to blow his whistle three times which was the signal for the start of the blasting operations.

The plaintiff went on to say that after he had taken position behind a rubber tree he heard the first whistle from corporal Abdul Manan followed by three whistles from the *kepala* after which he heard approximately 10 explosions. About 5 seconds after the last explosion the *kepala* blew a long blast whistle which was the signal for all clear and for them to come out of cover. After the all clear whistle he was to wait for a whistle from corporal Abdul Manan before allowing anyone to use the road. He heard the whistle from corporal Abdul Manan as soon as the whistle from the *kepala* stopped. On hearing the corporal's whistle he came out from behind the tree. After he had taken about three steps from the tree he heard another explosion, and he was hit by a splinter in his right eye. His eye started bleeding and he was taken to Tampin hospital from where he was sent to Seremban hospital where he remained for 17 days. As a result of the injury he has lost the sight in his right eye.

Corporal Abdul Manan gave evidence and related what happened on the afternoon of the date of the accident. He stated the procedure which was adopted during the course of the blasting operations and he corroborated the evidence of the plaintiff on all material particulars.

The first defendant in testifying as to the procedure which was followed for carrying out the blasting operations did not contradict what was said by the plaintiff and corporal Abdul Manan on this point. His evidence, however, was that he did not hear another explosion after corporal Abdul Manan had sounded the whistle, and that as far as he could remember the plaintiff was injured before the final whistle by corporal Abdul Manan. He did not deny that the plaintiff was injured, but he went on to say that he could not say whether the plaintiff was injured by an explosion before the final all clear and that he was not in a position to say where the plaintiff was taking shelter at the time of the explosion. In cross-examination he said that he could not see where the plaintiff was and therefore could not say at what stage he was injured.

Notwithstanding his pleadings, counsel for the defendant stated at the commencement of the trial of the action that the first defendant was not the owner of the quarry and that the second defendant was not the first defendant's servant. However he made no formal application for an amendment of his pleadings, and I pointed out to him that on the authority of *Steward* v. *North Metropolitan Tramways Co.*[1] an application for amendment could not be allowed if it was made

at a time when the period within which the action against a third party could be brought had expired. He also informed the court that the first defendant was not calling any witnesses. After the first defendant had given his evidence however, his counsel informed the court that his client then expressed a wish to call a witness. In the interests of justice I allowed an adjournment to enable the first defendant to call his witness.

The evidence of the first defendant's witness Tan Wee Hua was that he was a P.W.D. contractor and that he supplied granite to the P.W.D. He came to know the first defendant in the course of his business and that on a certain date in September 1957 he engaged the first defendant to supply him with explosives to blast the quarry. He went on to say that Chua was his *kepala* and that he was present when the blasting operations took place. He further said that after the all clear he did not hear any other explosion.

Having carefully considered the evidence produced by both sides, I accepted the evidence of the plaintiff and the corporal as to what took place on that day and rejected the evidence of the defendant and his witness that there was no further explosion after the all clear. As was pointed out by counsel for the plaintiff, the plaintiff and his witness were not cross-examined on the question of the explosion after the all clear. Their story on that point in fact was not challenged. All that was put to the plaintiff was that he did not take the right type of cover for his own safety.

It was clear from the evidence that the *kepala* as the shot-firer was negligent in giving the all clear without making certain that there were not going to be any further explosions. I therefore held the first defendant liable in damages. The plaintiff was present at the quarry in pursuance of a public duty and was consequently in the same position as an invitee (see *Read* v. *J. Lyons & Co. Ltd.*[2]), so that it was the duty of the first defendant as an invitor to take reasonable care for the safety of his invitee (see *London Graving Dock Co. Ltd.* v. *Horton*[3]). The case of *Mitchell* v. *National Coal Board*[4] cited by counsel for the plaintiff to my mind was a case in point.

As regards general damages I allowed $12,500 for the loss of one eye, following a similar award by Ismail Khan J. in Malacca Civil Suit No. 108 of 1964. Evidence was produced before me that as a result of his loss of one eye the plaintiff has lost all chances of further promotion in the police service. It is of course not possible to say that but for the loss of his eye the plaintiff would have definitely got further promotions, but in view of the fact that there was every likelihood of his being promoted at least to the rank of a police sargeant, in which event he would get a bigger salary over a period of years and a bigger pension on retirement, he was entitled to damages for loss of earnings by reason of his having been deprived of all chances of further promotion. I assessed such damages at $6,000 which I considered fair and reasonable in all the circumstances of the case. I allowed $100 in respect of special damages claimed. I thus gave judgment for the plaintiff against the first defendant in the sum of $18,000 with interest on $12,500 at 6% per annum from 20th September 1957 to date of judgment and thereafter on the aggregate at 6% per annum until the date of realisation and costs.

Judgment for the plaintiff.

Solicitors: *Sault, Keith Sellar & Co.; Chelvam & Co.*

HAJI ABDULLAH v. HUA HONG & ORS.

[O.C.J. (Ali J.) September 23, 1968]
[Muar — Civil Suit No. 155 of 1964]

Practice and Procedure — Costs — Taxation — Joint defendants in motion for declaration for ownership of car — Failure of 1st defendant to enter appearance — Judgment against both defendants with costs — Finding of fact that 1st defendant was not the agent of the 2nd defendant — Whether plaintiff entitled to recover his full taxed costs from 2nd defendant.

In an action for a declaration of ownership of a car and the return of its registration card against the defendants, the 1st defendant was sued as an agent and the 2nd defendant as his principal. The 1st defendant did not enter appearance. The 2nd defendant disputed the plaintiff's right of ownership. At the conclusion of the trial judgment was entered for the plaintiff against both defendants, and as regards costs it was ordered: "the 1st and 2nd defendants do pay to the plaintiff the costs of and incidental to this action". The plaintiff's bill of costs had been taxed and the 2nd defendants had paid half of it. They refused to pay the other half. On an application for the judge's ruling,

Held: the plaintiff was entitled to have the remaining half of the taxed costs from the 2nd defendants.

Case referred to:—

(1) *Stumm* v. *Dixon* (1889), 22 Q.B.D. 529.

SUMMONS-IN-CHAMBERS.

D. A. Devadason for the plaintiff.

L. M. Ong for the 2nd defendants.

Cur. Adv. Vult.

Ali J.: The plaintiff in this action entered into an arrangement with the 1st defendant, a motor car dealer in Segamat, for the purchase of a Mercedes Benz car. At first the plaintiff informed the 1st defendant that he would not be able to pay the full purchase price of the car. Upon taking delivery of the car the plaintiff signed certain documents in blank as given to him by the 1st defendant. One of these docu-